

**BEFORE THE COMMISSIONERS
AT QUEENSTOWN**

IN THE MATTER of the Resource Management Act 1991
("the Act")

AND

IN THE MATTER of an application under Part 2 of
Schedule 1 of the Act

AND

IN THE MATTER of proposed Private Plan Change 44 to
the Queenstown Lakes District Plan

BETWEEN **RCL Queenstown PTY Limited**

Requestor

AND **Queenstown Lakes District Council**

Territorial Authority

**CLOSING LEGAL SUBMISSIONS FOR THE REQUESTOR – RCL
QUEENSTOWN PTY LTD**

10 JULY 2015



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INTRODUCTION

- 1 The primary focus of PC44 for the Requestor, RCL, is that RCL's 'orange' land¹ is zoned more effectively and efficiently for urban residential development – including enabling a range of housing types and market price points.
- 2 The RCL-owned land has been subject to its current residential zoning since 2003.² No development has occurred on that land for a range of reasons. PC44 seeks to update this zoning to create greater land use efficiency and hence resolve some of the difficulties which have discouraged residential development on the land.
- 3 The current residential zoning for the entire PC44 land would produce a yield of 800-1300.³ The PC44 zoning would enable 1124-1829 (possibly more) houses on the RCL-owned land (the 'orange land') alone.⁴
- 4 This level of residential development as described in the evidence of Mr Wightman, has by far the largest potential of anywhere in the Wakatipu Basin to provide a range of much needed housing.
- 5 As set out in the evidence of Mr Wightman, RCL has been ready to start residential development works on the RCL land for the last two years – during which PC44 has been delayed by negotiations between the two major landowners. RCL is committed to the opportunity to improve upon the residential development offering (for the RCL land) to provide for a broader cross section of the market.

Affordable Housing

- 6 As discussed during the hearing, RCL considered the Special Housing Area option but considered that this was not sufficiently flexible, certain, or appropriate for a number of practical reasons.
- 7 As Mr Wightman noted, a major driver of affordability is supply, and development of the RCL land as enabled by PC44 will materially increase housing supply in the Wakatipu Basin.⁵

¹ Refer Evidence of Ben Espie for RCL, at Appendix 1.

² Evidence of Daniel Wells for RCL, at paragraph 11.

³ Evidence of Daniel Wells for RCL, at paragraph 11(a).

⁴ Evidence of David Wightman for RCL, at paragraph 13.

⁵ Evidence of David Wightman for RCL, in response to questions from the Commission.

- 8 Commissioner Cocks questioned how the development envisaged by RCL would achieve Section 4.10 of the Queenstown Lakes District Plan - Affordable and Community Housing. RCL will achieve these objectives and policies through a range of choices and controls including:
- (a) Building some housing under RCL's management to lower costs;⁶
 - (b) Producing a range of housing in the entry-level under \$500,000 bracket, and the mid-level \$500,000-\$700,000 bracket, but not producing housing over \$700,000;⁷
 - (c) PC44 enables higher density zoning on the RCL land which will contribute to the ability to provide lower price bracket housing.

SCOPE

- 9 An overview of the legal tests for scope was provided in the Opening Submissions for RCL, and is not proposed to be repeated here.⁸ It is submitted that there are no scope issues relevant to changes made to the originally notified PC44 – in respect of the RCL land.
- 10 There have been changes to PC44 (as notified) as it relates to the RCL land. The changes which have occurred to PC44 have been made for four reasons:
- (a) To accommodate the wide-ranging submissions of an original submitter – Henley Downs Farms (which opposed original PC44 in a number of major respects);
 - (b) To remove the Outline Development Plan (given the inherent legal uncertainties expressed by the Environment Court about such Plans);
 - (c) To integrate the Plan Change back into the existing Jacks Point Resort Zone (as sought by Council); and
 - (d) To respond to a number of discrete issues raised by submitters (outlined by Mr Wells).

⁶ Evidence of David Wightman for RCL, in response to questions from Commissioner Cocks.

⁷ Evidence of David Wightman for RCL, in response to questions from Commissioner Cocks.

⁸ Opening Legal Submissions for the Requestor for PC44, 1 July 2015, at paragraphs 20-23.

- 11 Natural justice concerns are an important component of scope. With regard to changes to PC44 applicable to the RCL land, no previous submitter, or potential submitter, could credibly claim to have been surprised or prejudiced by the changes made since notification. The land has had residential zoning for many years; the land area for the RCL residential development did not change between notification and now; some changes have been made to bulk and location controls for buildings; and slightly different processes apply to subdivision approvals – but these do not represent material differences to the overall nature of the originally proposed development.

MATTERS RAISED IN HEARING

- 12 The Requestor has taken note of a number of queries raised by the Commissioners during the hearing. These queries, and responses to them, are set out in the Table attached as **Appendix 1**.

Open Space: Mapping and Management

- 13 RCL recommend that as per the revised Structure Plan attached as **Appendix 2**, some areas can be “zoned” as “Open Space, Landscaping and Passive Recreation (O/P)”, which currently exists in the operative Jacks Point Resort Zone (see Rule 12.2.5.1 (i)(e)).
- 14 A topographical map included in Appendix 2 demonstrates that:
- (a) ‘Fixed’ open space has generally followed topography;
 - (b) There is an important level change between R(HD)-E and R(JP)-3 (the Delta lots) which helps to protect the outlook towards the lower RCL land.
- 15 The situation is more complicated with respect to the watercourses that run through the site. The indicative subdivision layout which was attached to the evidence of Mr Wells employed very conservative flood estimates. More recent advice is that, particularly given the flood mitigation strategies recommended by Mr Dent, many of these corridors could be narrower than was previously assumed. Furthermore, in some places streams are not well defined and some works to better define or realign these streams may be appropriate. Unnecessarily wide corridors could preclude otherwise suitable house sites from being developed, and would be expensive to landscape and maintain.

- 16 RCL's recommendation is that the open spaces that follow the watercourses continue to be shown indicatively on the Structure Plan. Proposed rules 12.2.5.1(ii)(a)(iii) and 15.2.6.2(vii) (which direct how development and subdivision should be assessed as compliant with the structure plan) can be amended to say:

"~~For those~~ Open Spaces ~~are~~ shown indicatively, ~~with~~ their exact location and parameters ~~to~~ shall be established through the subdivision process. Development prior to such subdivision occurring which would preclude the creation of these open spaces shall be deemed to be contrary to this rule. At a minimum, these open spaces shall provide for a 20m wide corridor within which there shall be no roads (except for crossing points) or habitable buildings. Public walking and cycling trails may be located within these corridors."

- 17 The minimum 20m width should provide assurance that these spaces will be large enough to contribute to neighbourhood amenity and allow riparian planting. It would also ensure a large enough space to allow for flood management maintenance work (a matter that can be further scrutinised through the detailed subdivision process). In some areas it is likely that the corridors will need to be considerably wider, but in other areas with lower flows, this width is expected to be sufficient to achieve the various purposes of these open spaces.
- 18 As noted in discussion between the Commissioners and Mr Wells, it would be appropriate for the matters of discretion with respect to subdivision to more clearly state that "the proposed treatment and landscaping of open spaces" is to be assessed, as recommended by Ms Jones.

Management

- 19 In regards to the management of the open space, RCL retains an open mind. RCL's stated preference is to vest public infrastructure and resources in the local Council wherever practicable. This aligns with providing to the market a clean purchase, free of additional fees and other encumbrances.
- 20 However, there are structures in place for the Open Space to be held and managed by a Body Corporate or residual organisation depending on the outcome of future discussions with QLDC.

Other Infrastructure

- 21 The private water supply scheme for Jacks Point (outlined by Mr Dent) will remain in private ownership.

- 22 With respect to wastewater disposal, RCL has committed to paying for a piped connection to the Council treatment facilities at Frankton. Subject to further discussions with QLDC, this pipeline will be owned by QLDC.
- 23 With respect to other public infrastructure, the preference of RCL is for this, wherever practicable, to be publically owned, rather than by private ownership arrangements. Subject to future discussions with QLDC, this may include flood protection works, public roading and open space.

Landscape

- 24 Given the importance of the issue, there was naturally extensive discussion of landscape aspects of residential development under PC44. It is noted that in a detailed statement QLDC's landscape expert Dr Read made no specific critique or comment on Mr Espie's landscape assessment with respect to landscape effects of residential development on RCL's land. It is apparent that there are no great differences between these two experts. Mr Espie's conclusion is that the proposed development of the RCL land is able to be appropriately managed in regards to landscape effects.⁹
- 25 It is also noted that Mr Espie considers his 2013 report lodged with the application for PC44 remains of assistance to the Commission.¹⁰ Mr Espie's 2013 report addressed matters which may continue to be of assistance, such as edge treatment at the northern boundary of the PC44 site to address the experience of persons using SH6.
- 26 Commissioner Munro raised a question in the hearing regarding the treatment of the direct interface between the RCL development and the existing Jacks Point development – in particular whether there might be potential for a vista of "6 metre high fences" for Jacks Point residents closer to the RCL land. The topographical map in Appendix 2 to these submissions also shows the higher elevation of the Jacks Point land in question which will help alleviate potential for impacts on views.
- 27 In addition, RCL considers that the extensive matters of discretion retained by the Council at subdivision stage are sufficient to give the Commissioners confidence that this

⁹ Evidence of Ben Espie for RCL, at paragraph 9.

¹⁰ Private Plan Change Request, Appendix D.

matter will be able to be appropriately managed with appropriate urban design input.

Design Matters

- 28 RCL recognises the importance of engaging design expertise to ensure that Hanley Downs establishes a high amenity character which integrates with the rest of Jacks Point and the surrounding landscape.
- 29 Dr Read's greatest concern is whether the connection between Hanley Downs and the existing Jacks Point development would be appropriately managed in the absence of an Outline Development Plan.¹¹
- 30 The indicative subdivision layout which was attached to the evidence of Mr Wells shows how, on a preliminary basis, work has been undertaken to understand the development potential of RCL's land. It is acknowledged that more refined plans will need to ensure that the interfaces with neighbourhoods in Jacks Point are designed in an appropriate manner. This may involve refinements to the subdivision layout or particular design controls over built forms and landscaping.
- 31 The proposed provisions provide plenty of discretion and direction on such matters, including through:
 - (a) Restricted Discretionary Subdivision status for subdivisions;¹²
 - (b) Matters of discretion and assessment matters which draw attention to the importance of:
 - (i) The design of open spaces between the Hanley Downs Residential Activity Area and the balance of Jacks Point;
 - (ii) Design of roads and streets;¹³
 - (iii) The importance of relationships between development and open space;¹⁴ and

¹¹ Evidence of Dr Marion Read for QLDC, in Oral Address, 3 July 2015.

¹² Evidence of Dan Wells, Revised Provisions (dated 29 June 2015), at 15.2.3.2.

¹³ Evidence of Dan Wells, Revised Provisions (dated 29 June 2015), at 15.2.7.3(xii)(a).

¹⁴ Evidence of Dan Wells, Revised Provisions (dated 29 June 2015), at 15.2.7.1, and 15.2.7.3(xii)(i).

- (iv) Extra attention to the design of subdivisions which create small lots and the built forms enabled by these;¹⁵
 - (c) Standards controlling the colours of permitted residential buildings;¹⁶
 - (d) Controlled activity status for:
 - (i) 3 or more attached residential buildings; or
 - (ii) More than one residential unit on a site at a density greater than 400m² per unit.¹⁷
- 32 Dr Read was concerned that the provisions relied too much on the good intentions of the developer, and did not provide enough certainty. To the extent that these comments related to the RCL land, it is submitted that the matters of discretion are tailored and focussed enough to provide this certainty.

Upgrade of Woolshed Road

- 33 Following discussions between the Requestor, Henley Downs Farms, and NZTA, a trigger point of 300 houses has been agreed as the appropriate level at which the upgrade of the intersection should be required.
- 34 Some questions have been raised throughout the hearing regarding how Woolshed Road will be managed until that upgrade. RCL is confident that a combination of appropriate traffic management plans with routine security measures, and the construction use of the road, will mean Jacks Point or Hanley Downs residents will be most unlikely to wish to use the road until the intersection is upgraded. Based on its extensive construction experience, RCL considers that the proposed traffic management plan and trigger point mechanism will work from a practical viewpoint. This appropriately addresses access and roading issues.
- 35 The agreed wording for this provision was provided to the Commission by Mr Fergusson.

Wastewater Disposal

- 36 As noted above, RCL confirms that if PC44 (as it relates to the RCL land) is approved, then RCL will fund a wastewater

¹⁵ Evidence of Dan Wells, Revised Provisions (dated 29 June 2015), at 15.2.6.4(i)(i).

¹⁶ Evidence of Dan Wells, Revised Provisions (dated 29 June 2015), at 15.2.5.1 (xvi).

¹⁷ Evidence of Dan Wells, Revised Provisions (dated 29 June 2015), at 12.2.3.2(xiv).

connection to Frankton for wastewater disposal form residential development on the RCL land.

- 37 The evidence of Mr Potts confirms that wastewater disposal for the proposal level of development on the RCL land is feasible and practical.¹⁸

District Plan Review

- 38 It is correct that the Jacks Point Resort Zone (an area larger than just the PC44 land) has been discussed for inclusion in the (soon to be) notified District Plan review between QLDC and the Jacks Point interests (which closely align with Henley Downs Farms).
- 39 RCL have not yet consented to the RCL-owned 'orange' land proceeding through the formal District Plan review process, and are in discussions with QLDC regarding how best to interlink any outcome of this PC44 process with the District Plan review.
- 40 In essence, RCL has no intention of waiting. For example, if the zoning change provided by PC44 for RCL's land were to be further delayed by waiting for completion of the current District Plan review, RCL would develop the land based on the residential zoning which currently applies. Due to the inefficiencies of the current zoning, it is anticipated that the following effects would result from such development:
- (a) The quality of the built form would suffer;
 - (b) The yield will be inefficiently low;
 - (c) A wastewater pipe to Frankton would not eventuate;
 - (d) Access to Hanley Downs will continue to be via Māori Jack Road;
 - (e) The development would be unlikely to produce affordable housing.
- 41 Whatever the fate of the 'blue' Henley Downs Farms land, RCL considers there is no reason to decline PC44 as it relates to the RCL-owned land.

¹⁸ Evidence of Robert Potts for RCL.

HENLEY DOWNS FARMS

- 42 Counsel have read the closing legal submissions for Henley Downs Farms and have no comment to make on those submissions.

SUMMARY

- 43 There is a crucial housing shortage in the Wakatipu Basin which in practical terms will not be met by waiting for other residentially zoned land to be developed – or for so called 'special housing areas' to be approved. Neither of these options, even in combination, have the potential to provide the range of housing made possible by PC44 as it applies to RCL's land.
- 44 PC44 (as it applies to the RCL land) will make a substantial practical contribution to solving the district wide housing shortage issue.
- 45 It will provide far more new houses than all of the proposals for special housing areas recently reviewed by QLDC (only several of which were accepted for further review).
- 46 With respect to the RCL land subject to PC44, there is substantial agreement between experts for the Council and RCL, and no major areas of substantive disagreement on planning, landscape or infrastructure issues. There are no unresolved issues which would warrant declining approval of PC44 for RCL's land.
- 47 There is an agreed and detailed regulatory framework in the proposed zoning provisions to ensure that the effects of development will be managed and a good quality of design ensured. Finalisation of the detailed zoning may require brief expert caucusing following an interim decision.

DATE: 10 July 2015



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APPENDIX 1: MATTERS RAISED IN HEARING, AS PROPOSED TO BE ADDRESSED BY RCL

Issue	Requestor's position
General	
<p>Tidying up:</p> <ul style="list-style-type: none"> the numbering of objectives/policies/rules and terminology – for example Activity Areas (the term is used to refer to both the overall Hanley Downs Activity Area and parts thereof e.g. "R(HD)-E") 	The Requestor acknowledges that the plan change should be improved in this regard, which may be addressed in the final stages of completion.
<p>Adding Assessment Matters re:</p> <ul style="list-style-type: none"> Amenity of roads (particularly the "main road" shown on the structure plan); Limiting incursion of development on landforms; Managing lighting spill. 	The Requestor would support such changes.
Special Zones	
Rule 3.35: Suggestion to delete 'where relevant', and leave just 'potential public transport'	The Requestor would support such a change.
Rule 3.32: Suggestion to replace 'co-location' with 'consolidation'	The Requestor would support such a change.
Resort Zone	
Potential methods to improve integrated planning while remaining consistent with the Environment Court's findings on Outline Development Plans in PC19, for example a requirement that the first subdivision applicant is to set an indicative road layout	The Requestor would support such changes. The Requestor is happy to participate in developing wording on this matter.
Permit notification of sale of liquor – 12.2.3.3(f)	The Requestor would support such a change.
Structure Plan Rules: Amendment of the rules on page 12-12 to reflect the newer more accurate delineation of some open spaces on the Structure Plan	The Requestor suggests some wording to address this issue in its final submission
Rule 12.2.5.2(e)(c)(c) (page 12-20): Correction from 400m ² to 550m ²	The Requestor would support such a change.
Rule (xv)(b) (page 12-23): Suggestion to delete 'retail' and replace with 'commercial' (regarding location 120m from primary road)	The Requestor would support such a change.

Issue	Requestor's position
Subdivision Rules	
Suggestion to amend the placement of the specific subdivision rules	The Requestor would support a change and considers regard to the recommendation of Mr Ferguson would be appropriate on this matter.
Rule 15.2.6.2(i)(b)(i): Suggestion to add 'such as consent notice or covenant'	The Requestor would support such a change. If the commission has concerns about excessively detailed design matters being recorded in consent notices, the commission could state more explicitly the extent of Council's discretion with respect to restricted discretionary subdivisions of sites below 550m ² . To do this, the Commission may wish to consider the matters of control that were proposed in the RCL / Henley Downs Farms joint position submitted to Council prior to the hearing for sites between 400m ² and 550m ² (see Rule 15.2.3.2(vi) in that version of the provisions dated 8 June). The Requestor would support such refinements.
Matter (e) (page 15-24): Amendment to refer to the more accurate Open Space mapping on the revised Structure Plan	In the attached revised structure plan some open spaces are more accurately delineated. This is further discussed in the Requestor's final submission.
Rule 15.2.7.3(xii)(f) (page 15-37): Amendment to read "A range of housing choice <u>is to be provided</u> may be promoted through some diversity in section lot sizes."	The Requestor would support such a change.
Matters of discretion with respect to subdivision (under 15.2.7.1 in the version of the rules attached to the evidence of Mr Wells) to be expanded to include landscaping of public spaces and diversity in lot size and density (as recommended by Ms Jones).	The Requestor would support such a change.

APPENDIX 2: REVISED STRUCTURE PLAN (CLARITY OF OPEN SPACE) AND TOPOGRAPHICAL MAP